

**Amendment No. 2 to SB2402**

**McNally**  
**Signature of Sponsor**

**AMEND Senate Bill No. 2402**

**House Bill No. 2228\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by adding the following as a new section:

(a) Notwithstanding any other method authorized by law, a foreign or alien insurer may become a domestic captive insurance company by complying with all of the requirements of this chapter relative to the organization and licensing of a domestic captive insurance company of the same type with the approval of the commissioner. A company redomesticating to this state pursuant to this section may be organized under any lawful corporate form permitted by this chapter.

(b) A redomestication pursuant to this section shall be authorized for insurance companies domiciled in foreign or alien jurisdictions that authorize the redomestication of insurance companies where, as a result of the actions taken by the company pursuant to this section to redomesticate to this state, shall no longer be a domestic legal entity of foreign or alien jurisdiction. A company wishing to redomesticate under this section must also provide evidence that the applicable regulatory authority of its domicile consents to the redomestication.

(c) An insurance company wishing to redomesticate under this section shall file with the secretary of state its articles of association, charter, or other organizational document, together with appropriate amendments thereto adopted in accordance with the laws of this state and bring such articles of association, charter, or other organizational document into compliance with the laws of this state, along with an approval letter issued by the commissioner. The company may file with the secretary of

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state an election deferring the effective date of the redomestication. Upon filing and paying the required fees prescribed in title 48 and title 61, the secretary of state shall issue an acknowledgement letter to the applicant. The secretary of state is also authorized to promulgate rules that provide for a fee to cover the cost of a redomestication.

(d) The company shall file a copy of the secretary of state's acknowledgement letter with the commissioner, who shall then issue a license pursuant to § 56-13-103.

(e) Upon the completion of a redomestication under this section, the captive insurance company shall be subject to the laws of this state and shall be considered domiciled in this state. The captive insurance company shall be deemed to have a formation date corresponding to its original formation date in the foreign or alien domicile.

(f) For the purposes of the § 56-13-109 examination, any examination conducted by the foreign or alien domicile that is substantially similar to an examination that would have been done in this state had the company been domiciled in this state shall be recognized for the purposes of establishing the period of time when the next examination is due.

(g)

(1) A company redomesticating under this section shall only be liable for taxes due pursuant to § 56-13-114 on premiums paid to the company after redomestication.

(2) A company redomesticating under this section after July 1 of any year shall only be subject to one-half (1/2) of the minimum premium tax specified in § 56-13-114(c) in its first year.

(3) An alien company redomesticating under this section shall report all premium taxes due under § 56-13-114 but may, in either its first or its second year of operations, but not both, after redomesticating into this state, elect to forego the payment of premium taxes. However, a company making such an election that surrenders its license or redomesticates to another jurisdiction within five (5) years of redomestication into this state shall immediately pay a tax in an amount equal to the foregone premium tax plus ten percent (10%) per annum from the date the foregone premium tax would have been due.

(h) This section shall not be the exclusive means of redomesticating an insurance company to this state and shall not restrict the ability of an insurance company to undergo a merger, consolidation, transfer of assets and liabilities, or utilize any other means permitted by law to effect the transfer of operations of a foreign or alien insurance company to this state.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 13, Part 2, is amended by adding the following as a new appropriately designated section:

(a) The pleadings in any legal action brought by or against a protected cell captive insurance company shall specify which protected cell or cells are or should be named a party to the suit. If the general account is party to this suit, it likewise shall be separately identified in the pleadings as if it were a protected cell.

(b) A legal action brought against a protected cell captive insurance company that does not specify one (1) or more protected cells shall be deemed to have been brought against the general account only.

(c) Any protected cell that is not named in the pleadings of the legal action shall not be deemed to be a party to the legal action. Any protected cell that is erroneously

named as a party or named without proper cause shall be entitled to prompt dismissal from the legal action.

(d) Unless specified by the plan of operation, participant contract, or other prior contractual agreement, the assets of one (1) protected cell may not be encumbered or seized to satisfy the obligations of or a judgment against any other protected cell. No protected cell has a duty to defend the rights and obligations of any other protected cell.

(e) In any legal action involving a protected cell captive insurance company or a protected cell, any papers, documents, or property of a nonparty protected cell shall be afforded the same status during discovery as the documents or property of any other unrelated third party. A nonparty protected cell shall have standing to appear and petition for any appropriate relief to protect the confidentiality of its papers or documents.

SECTION 3. Tennessee Code Annotated, Section 56-13-114, is amended by adding the following subsection:

(i)

(1) Entities in this state, including industrial insureds as defined in § 56-2-105(7), who have procured insurance from a captive insurance company and, on or before December 31, 2018, either redomesticate that captive insurance company to this state pursuant to this chapter or transfer a complete line of business or complete geographic risk into a captive formed in this state between January 1, 2016, and December 31, 2018, shall not be liable for any unreported taxes due pursuant to § 56-2-411 on a policy or contract of insurance procured from the captive insurance company before the redomestication of the captive insurance company or transfer of line of business or complete geographic risk to this state; provided, that the policy or contract is substantially similar to a policy or contract of insurance procured from the captive insurance company after it is redomiciled or after the line of business or the complete geographic risk is transferred to this state.

(2) In order for a transfer of a line of business or complete geographic risk to a Tennessee captive formed between January 1, 2016, and December 31, 2018, to qualify under subdivision (i)(1), the Tennessee captive formed between January 1, 2016, and December 31, 2018, must have and maintain, for no less than five (5) years from the date of formation, capital of at least fifteen million dollars (\$15,000,000) and annual premiums of at least thirty million dollars (\$30,000,000).

SECTION 4. Tennessee Code Annotated, Section 56-13-114(a), is amended by deleting the language "March 1" and replacing it with the language "March 15".

SECTION 5. Tennessee Code Annotated, Section 56-13-114(b), is amended by deleting the language "March 1" and replacing it with the language "March 15".

SECTION 6. Tennessee Code Annotated, Section 56-13-108, is amended by deleting the first sentence of subsection (b) and substituting the following sentence:

Prior to March 15 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers; provided, however, that a captive insurance company organized as a risk retention group shall instead submit to the commissioner a report of its financial condition prior to March 1 of each year, verified by oath of two (2) of its executive officers.

SECTION 7. Tennessee Code Annotated, Section 56-13-108, is amended by deleting subdivision (c)(2) and substituting the following:

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file, prior to March 15 of each year for each calendar year-end, such information as may be required on a form approved by the commissioner, verified by oath of two (2) of its executive officers.

SECTION 8. This act shall become effective upon becoming a law, the public welfare requiring it.